

873

Governing Body Resolution

of the

Town of Nags Head

(Name of Unit of Local Government)

WHEREAS, certain municipalities and other units of local government of the State of North Carolina, as defined in G.S. 160A-460(2), have agreed to create the MUNICIPAL INSURANCE TRUST OF NORTH CAROLINA and have agreed to pool the risks associated with the provision of benefits for their designated benefit plan participants pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A);

NOW, THEREFORE, BE IT RESOLVED that the above named unit of local government elects to become a member of the MUNICIPAL INSURANCE TRUST OF NORTH CAROLINA upon the terms and conditions stated in the "Interlocal Agreement for a Group Self-Insurance Pool For Benefit Risk Sharing," with such future policy renewals constituting a continuing ratification of this decision to be a member of the Trust and abide by the terms and conditions of the Interlocal Agreement.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the duly authorized officials of the above named unit of local government are directed to execute in the name of said unit the "Interlocal Agreement for a Group Self-Insurance Pool For Benefit Risk Sharing," a copy of which is attached to and made a part of this Resolution.

I certify that this is a true and correct copy of this Resolution, duly adopted by the governing body on the 16th day of June, 2010, as it appears of record in its official minutes.

Town of Nags Head

(Name of Unit of Local Government)

By: Robert O. Oakes, Jr., Mayor

(Mayor, or Board Chair)



Carolyn F. Morris, Town Clerk

(Clerk, or Secretary to the Board)

**INTERLOCAL AGREEMENT FOR A
GROUP SELF-INSURANCE POOL
FOR BENEFIT RISK SHARING**

This Agreement, made and entered into in duplicate originals this 16th day of June, 2010, by and between all the parties who are now, or may hereafter become, members of the Municipal Insurance Trust of North Carolina (hereinafter "Trust"):

WITNESSETH:

WHEREAS, certain municipalities and other units of local government of the State of North Carolina have agreed to pool the risks associated with the provision of benefits for their designated benefit plan participants (hereinafter "participants") pursuant to, and to be governed by, the provisions of North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A); and

WHEREAS, the members of the Trust have agreed upon designation of a Board of Trustees to direct the affairs of the Trust, to adopt rules, regulations, policies, and bylaws for implementing and administering the Trust, and to pass upon the admissibility of future members of the Trust; and

WHEREAS, the members have designated the North Carolina League of Municipalities as Administrator of the Trust, subject to the provisions of this Agreement and the policies adopted by the Board of Trustees; and

WHEREAS, by this Agreement the Trust will undertake to discharge, solely from the assets of this Trust, by payment, any claims for benefits covered by the Trust's plan of insurance and benefits, which awards shall have been authorized by the rules of the Trust, and when claims are otherwise determined to be due as a result of a court judgment or settlement agreement; and

WHEREAS, the members of the Trust agree to pay premiums and/or contributions based upon appropriate classifications, rates, loss experience, and other criteria adopted by the Trustees, out of a portion of which the Trust will establish and maintain a fund for the payment of the claims of participants of members, and further, that the members covenant and agree there will be no disbursements out of this fund by way of dividends or distribution of accumulated reserves to the respective members, except at the discretion of the Trustees.

WHEREAS, the members of the Trust, through action of their respective governing bodies, have elected to comply with the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties hereto agree as follows:

SECTION I. PURPOSE OF AGREEMENT; COMPOSITION OF BOARD OF TRUSTEES

The purpose of the Trust established by the signatories hereto is to allow members to jointly provide health benefits, including but not limited to medical, dental, vision, life, accident, disability, and other related insurance benefits, for their participants and to provide for the risk sharing associated therewith. To this end, the Trust shall be governed by a Board of Trustees made up of thirteen (13) officials or employees of units of local government. Eleven (11) members shall be appointed for three (3) year overlapping terms by the Board of Directors of the North Carolina League of Municipalities. In addition, the Board of Directors of the North Carolina League of Municipalities shall appoint two (2) of its members to the Board of Trustees, to serve at the pleasure of the Board of Directors, but not more than six months beyond the end of their tenure on the Board of Directors. The foregoing provisions shall not be construed to prevent the Board of Directors from appointing others of its members to one or more of the eleven (11) regular 3-year terms. In addition, the Executive Director of the North Carolina League of Municipalities shall serve as an ex-officio, non-voting member of the Board of Trustees: the ex-officio member position shall not have a committee assignment, nor shall the position serve as an officer of the Board of Trustees.

SECTION II. TRUSTEES' POWERS, DUTIES, LIABILITY AND INDEMNITY

The Trustees shall have the following powers and duties, in addition to those set forth elsewhere in this Agreement:

1. To establish guidelines for membership in the Trust;
2. To establish the terms and conditions of coverage, including underwriting criteria and exclusions from coverage;
3. To ensure that all valid claims are promptly paid;
4. To establish, operate, and enforce rules, regulations, policies, and bylaws as between the individual members of the Trust and the Trust;
5. To enter into agreements with such persons, firms, or corporations as it deems appropriate to adjust claims; promote membership in the Trust; provide actuarial and underwriting services; defend against claims and lawsuits; provide accounting services; effect stop-loss coverage in such aggregate and specific amounts as is deemed appropriate; invest the assets of the Trust; provide wellness services and other risk management services for the Trust and member units; maintain records and accounts; and provide any other service necessary or desirable for the sound operation of the Trust;
6. To lease or rent real and personal property it deems to be necessary;
7. To borrow or raise monies for the purpose of the Trust to the extent that the Trustees shall deem desirable upon such terms and conditions as the Trustees in their absolute discretion may deem desirable or proper, and for

any sum so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging all or any part of the pool; and no person or entity lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any such borrowing;

8. To rate individually any member unit with rates different from the group rates when the loss experience of the unit warrants such individual rating, in the discretion of the Trustees;
9. To take measures to maintain claim reserves equal to known incurred losses and loss adjustment expenses and to maintain an estimate of incurred but not reported losses; and
10. To take all necessary precautions to safeguard the assets of the Trust.

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. The members agree that the Trustees shall not be liable for any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor selected with ordinary care and reasonable diligence; nor for loss incurred through investment of Trust money or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. The Trustees shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

The members of the Trust agree that, for the payment of any claim against the Trust or the performance of any obligation of the pool hereunder, resort shall be had solely to the assets of the Trust, and neither the Trustee nor the Administrator shall be liable therefor. Further, the Trust shall indemnify and hold harmless the Trustees against any and all claims, suits, actions, debts, damages, costs, charges, and expenses (including but not limited to court costs and attorneys' fees) and against all liability, losses, and damages of any nature whatever, that the Trustees shall or may at any time sustain, or be put to, by reason of the exercise of their power and in the

performance of their duties hereunder, or by reason of any mistake of judgment or other action made, taken, or omitted by any employee, agent, contractor, subcontractor, or independent contractor, or for loss incurred through investment of Trust money or failure to invest.

SECTION III. PAYMENT OF CLAIMS

The members of the Trust agree that, for the payment of any claim against the Trust or the performance of any obligation arising hereunder, resort shall be had solely to the assets of the Trust, and neither the Trustees nor the Administrator shall be liable therefor. Accordingly, lawful claims will be paid from the assets of the Trust pursuant to the types and levels of coverage established by the Board of Trustees. The Board of Trustees shall establish a schedule of types and monetary levels of coverages for which the Trust shall be responsible on behalf of its members, including provisions for levels of coverage for which the members shall be individually responsible. Such types and levels of coverage may vary according to population classifications of members, mutual agreement of the Trust and a member, or such other criteria as may be established by the Trustees. The types and level of coverage shall be shown on a plan of insurance and benefits provided to each member. The Trust shall pay all claims (less the applicable co-pays or co-insurance) for which each member incurs liability during each member's period of membership except where a member has individually retained the risk or where the risk is not covered, and except for amount of claims above the coverage provided by the Trust. The schedule so established may, from time to time, be amended by the Trustees (but not during any coverage period) to sustain the financial integrity of the Trust or to reflect the desires of the members as determined by the Trustees.

SECTION IV. MUTUAL COVENANT OF RISK SHARING

The members intend this Agreement as a mutual covenant of risk sharing and not as a partnership. No member by reason of being a member of the Trust and contributing to the pool shall be liable to the Trust, to any other member, or to any claimant, except for the payment of the premiums and/or contributions provided for in its application for membership and joinder in this Trust and for any necessary additional assessments levied by the Trustees to offset a claims fund deficiency.

SECTION V. ADMINISTRATOR

The North Carolina League of Municipalities, an unincorporated association with offices at 215 North Dawson Street, Raleigh, North Carolina, 27602, is designated as the Administrator of the Trust. Subject to the direction of the Trustees, the Administrator shall provide day-to-day management of the Trust and shall have the authority to contract with third parties for provision of services. The Administrator may establish offices where necessary within the State of North Carolina and employ staff to carry out the Trust's purpose. The Administrator shall deposit to the account of the Trust at any financial institution or financial institutions designated by the Trustees all premiums and/or contributions as collected and such monies shall be disbursed and/or invested only as provided by the rules, regulations, policies, and bylaws of the Trustees. The Administrator may enter into financial services agreements with financial institutions and issue checks in the name of the Trust. The Administrator shall receive such compensation as shall be determined from time to time by the Trustees.

SECTION VI. ADMISSION TO MEMBERSHIP; SUSPENSION & EXPULSION

All members of the Trust hereby agree that the Trustees may admit as members of this Trust only the units of local government set forth in North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A). The Trustees shall be sole judge of whether or not an applicant shall be admitted to membership. Except as otherwise provided in Section VII (g) of this Agreement, a member may be suspended or expelled by the Trustees from the Trust only after forty-five (45) days' notice has been mailed to it. No payment shall be required of the Trust as a result of any accident to or illness of a participant of the suspended or expelled member occurring after forty-five (45) days' notice has been mailed to the member.

**SECTION VII. RULES, REGULATIONS, POLICIES, AND BYLAWS;
MEMBERS' RESPONSIBILITIES**

The rules, regulations, policies, and bylaws for the administering of the Trust and the admission and expulsion or suspension of members shall be promulgated by the Trustees. In addition, each member of the Trust agrees as follows:

- (a) To make prompt payment of all premiums and/or contributions as required by the Trustees;
- (b) To (and they do hereby) appoint the Trustees and Administrator as its agent and attorney-in-fact, to act in its behalf and to execute all contracts, reports, waivers, agreements, stop-loss contracts, and service contracts; to make or arrange for payment of claims and all other things required or necessary, as covered by the terms of this Agreement and the rules, regulations, policies, and bylaws as now provided or as hereafter promulgated by the Trustees;
- (c) To permit the Trust to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them for which the Trust may be obligated to make payment. It is agreed that the Trust shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to defense, settlement, and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a member without approval of the Trust shall be grounds for expulsion of the member from the Trust;
- (d) To cooperate in all respects with the Trust, the Trustees, the Administrator, and any contractors of the Trust in carrying out the purposes of this Agreement;

- (e) To pay any assessment duly levied by the Trustees under the terms of this Agreement. If a member cancels or withdraws from the Trust, the member shall pay its pro rata share of any assessment relating to the member's period of enrollment;
- (f) In the event of the payment of any loss by the Trust under this Agreement, the Trust shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event the member agrees to render all reasonable assistance to affect recovery;
- (g) Risk sharing by the Trust under the terms of this Agreement shall begin upon payment of the premium and/or contributions by the member to the Trust. Risk sharing and insurance purchased from this Trust under the terms of this Agreement shall expire and be cancelled automatically for nonpayment of premiums/and or contributions, and a member may be expelled from the Trust upon thirty (30) days' prior written notice by mail by the Trustees, the Administrator, or their designee to the member specifying the date that cancellation shall be effective. No payment shall be required of the Trust as a result of any covered loss of a participant of the expelled member occurring after thirty (30) days' notice has been mailed to the expelled member; and
- (h) In order that an adequate reserve may be maintained, the members further agree that the Trustees shall have the right to assess the members pro-rata in such amounts as will be sufficient to maintain at all times a minimum reserve, equal to at least twice the monthly premium and/or contributions for the insurance and benefits provided by the plan. Should a member fail to pay any assessment as provided for in this Section within thirty (30)

days of the assessment date, all interest and claim of such defaulting member in and to the Trust shall automatically cease.

SECTION VIII. ALLOCATION OF MONIES

The Trustees are authorized to set aside from the contributions collected from members a reasonable sum for the operating and administrative expenses of the Trust. Monies in excess of those required to fulfill the purposes, costs, and other obligations of the Trust will be accumulated in the Trust or distributed to the members at the discretion of and in the manner provided by the Trustees.

SECTION IX. FISCAL YEAR; CONTINUING CONTRACT; WITHDRAWAL OF MEMBERS SUBJECT TO PROVISION OF 45 DAYS' WRITTEN NOTICE TO ADMINISTRATOR; FEE IMPOSED FOR FAILURE TO PROVIDE 45 DAYS' WRITTEN NOTICE OF WITHDRAWAL

The Trust shall operate on a fiscal year from 12:01 a.m., July 1st to midnight on June 30th of the succeeding year (the "Trust Year"). Application for membership, when approved by in writing by the Trustees or their designee, shall constitute a continuing contract for each succeeding Trust Year unless canceled by the Trustees, or unless the member shall have resigned or withdrawn from the Trust by having written notice delivered to the Administrator on or before May 15 (i.e., the Administrator must receive written notice forty-five (45) days prior to the last day, June 30, of the Trust Year). Failure to provide forty-five (45) days' written notice shall subject the member an exiting fee constituting two percent (2%) of the premium for that Trust Year.

SECTION X. MEMBERS BOUND BY AGREEMENT; TERMINATION PERMITTED ONLY AT END OF FISCAL YEAR; FINAL ACCOUNTING

Any member who formally applies for membership in this Trust and is accepted by the Trustees shall thereupon become a party to this Agreement and be bound by all of the terms and conditions hereof, and such application shall constitute a counterpart of this Agreement. Cancellation of the Agreement on the part of any member, or withdrawal from membership, shall be

permitted only at the end of a fiscal or Trust year. A terminating member is entitled to a final accounting when all incurred claim are concluded, settled, or paid.

SECTION XI. EXTENT OF INSURANCE BENEFIT TO PARTICIPANTS

No participant of a member or any person claiming by or through or under such participant shall have any right, title, or interest in or to the Trust or any part thereof: provided, however, that any participant who shall be actually covered by the policies of insurance of any person claiming by or through such participant shall, subject to the terms and conditions of the plan of insurance and benefits under which the coverage is afforded, be entitled to the insurance benefits in the amount and to the extent provided.

SECTION XII. INTENTION OF INDEFINITE OPERATION; RESERVATION OF RIGHT TO TERMINATE TRUST; REVERSION OF MONIES OR OTHER ASSETS UPON TERMINATION

This Trust has been established with the bona fide intention that it shall be continued in operation indefinitely and that the premiums and/or contributions to the pool shall continue for an indefinite period. However, the Trustees reserve the right at any time to terminate the Trust by a written instrument to that effect executed by the Trustees. In the event of such termination, member premiums and/or contributions (other than duly authorized assessments) shall cease as of the date of termination and the assets then remaining in the pool shall continue to be used and applied, to the extent available, for the

- (a) payment of benefits to participants with respect to claims arising prior to such termination and administrative and other expenses and obligations arising prior to such termination; and
- (b) payment of reasonable and necessary expenses incurred in such termination.

Any monies or other assets thereafter remaining in the pool shall revert to the members of the Trust as of the date of termination pro-rata to the annual premiums and/or contributions of said members paid in the year of termination. Upon such termination, the Trustees shall continue to serve for such period of time and to the extent necessary to effectuate termination of the Trust.

SECTION XIII. AMENDMENT OF AGREEMENT

This Agreement may be amended by an agreement executed by those members constituting a majority in paid-in dollar volume of contributions to the Trust during the current Trust Year. In lieu of this amendment procedure, the members hereby appoint the Board of Directors of the North Carolina League of Municipalities as their agents to make any amendments to this Agreement which would not fundamentally alter the contemplated arrangement. For purposes of illustration, and not limitation, an amendment to increase or decrease the number of members of the Board of Trustees or their terms shall not be construed as a fundamental alteration of the arrangement, provided that the current term of a member may not be terminated by any such amendment. Written notice of any amendment proposed for adoption by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not less than 30 days in advance. Written notice of amendments finally adopted by the Board of Directors of the North Carolina League of Municipalities shall be mailed to each member not more than 30 days after adoption.

SECTION XIV. HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for the convenience of reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION XV. INTERPRETATION

This Agreement shall be governed and interpreted under the laws of the State of North Carolina. This Agreement is intended to serve as an interlocal agreement, for purposes of ex-

ecuting the undertaking described in the preceding sections and paragraphs, under North Carolina General Statutes 160A-460 *et seq.* (Part 1 of Article 20 of Chapter 160A). The terms of this Agreement do not constitute a coverage document or form applicable to any specific claim. The liability of the Trust to the participants of any member is specifically limited to such obligations as are imposed by the plan of insurance and benefits as approved by the Trustees.

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

Failure of the Trustees, the Administrator, or their designees to insist in any one or more instances upon the performance of any of the covenants, agreements, and/or conditions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as a waiver of any such covenant or condition.

This Agreement contains the entire agreement between the parties, whom shall not be bound by any verbal statement or agreement made heretofore.

IN WITNESS WHEREOF, the participating entity listed below acknowledges its membership in the Trust and acceptance of obligations hereunder, by the due execution hereof, following appropriate governing body approval, by its duly authorized official. Further, the members of the Municipal Insurance Trust of North Carolina have caused these presents to be signed by their duly authorized Chair of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

WITNESS:

Robert A. Haynes

MUNICIPAL INSURANCE TRUST
OF NORTH CAROLINA

BY: Paul N. Brookshire
Chair
Board of Trustees

Kristy Barefoot

NORTH CAROLINA LEAGUE
OF MUNICIPALITIES

BY: P. Elton Hankins
Executive Director
Administrator

Carolyn F. Morris
(Clerk, or Secretary to the Board)
Carolyn F. Morris, Town Clerk

Town of Nags Head
(NAME OF PARTICIPATING ENTITY)
BY: Robert O. Oakes, Jr.
(Mayor, or Board Chair)
Robert O. Oakes, Jr., Mayor



#873

IN WITNESS WHEREOF, the participating entity listed below acknowledges its membership in the Trust and acceptance of obligations hereunder, by the due execution hereof, following appropriate governing body approval, by its duly authorized official. Further, the members of the Municipal Insurance Trust of North Carolina have caused these presents to be signed by their duly authorized Chair of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

WITNESS:

Robert A. Haynes

MUNICIPAL INSURANCE TRUST
OF NORTH CAROLINA

BY: El Alexander
Chair
Board of Trustees

Kristy Barefoot

NORTH CAROLINA LEAGUE
OF MUNICIPALITIES

BY: L. Elrod + Harland
Executive Director
Administrator

Carolyn F. Moore
(Clerk or Secretary to the Board)



(NAME OF PARTICIPATING ENTITY)

Robert O. Oakes, Jr.
(Mayor, or Board Chair)
Robert O. Oakes, Jr.
Mayor, Town of Nags Head